

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA**

IN RE

ELLEN ELONDA LEGIER

DEBTOR

**BANKRUPTCY NO.
03-19115**

SECTION “B”

CHAPTER 7

MEMORANDUM OPINION

This matter comes before the court on the motion of the debtor, Ellen Elonda Legier, for a new trial and/or amendment of the order entered by the court on May 19, 2004 denying the exemption of her federal income tax refund from the bankruptcy estate. Upon consideration of the briefs submitted and the applicable law, the court denies the debtor’s motion and declines amending the order of May 19, 2004, sustaining the objection and denying the exemption for the following reasons.

I. FACTUAL AND PROCEDURAL HISTORY

On November 24, 2003, the debtor filed a voluntary petition for Chapter 7 bankruptcy relief. On April 6, 2004, on her Supplemental and Amended Schedule C, the debtor claims an exemption in the amount of \$6,500 for “Household Furnishings & Excess Wages Withheld.” This amount includes

the pre-petition portion of the debtor's 2003 income tax refund in the amount of \$4,113.93, which includes wages subjected to excess withholding, an earned income tax credit, and a child tax credit.¹ The income tax refund is currently being held by the trustee for the benefit of the bankruptcy estate.

That same day, the debtor also filed a "Motion to Determine Exemption of Wages Subjected to Excess Withholding and Ordering Payment Thereof to the Debtor," in which she argued that the pre-petition portion of her 2003 income tax refund constitutes disposable earnings under La. Rev. Stat. 13:3881, which provides that 75 percent of a debtor's disposable earnings in any given week are exempt from seizure.² In response, on April 26, the trustee filed an objection.³ On May 11, the debtor objected to the trustee's objection.⁴

On May 19, 2004, at a hearing on the matter, the court granted the trustee's objection and entered an order holding that the trustee is entitled to retain the debtor's income tax refund for the benefit of her creditors.⁵ Specifically, the court found that income tax refunds do not constitute disposable income subject to exemption under Louisiana law, and even if they did, the trustee's possession of the funds does not violate the statute because the

¹ Pl. 25, attached.

² Pl. 11.

³ Pl. 21.

⁴ Pl. 25.

⁵ Pl. 28.

amount did not exceed 25% of the debtor's disposable earnings for any given week.

On June 1, 2004, the debtor filed the motion for new trial and/or amendment under Federal Rules of Civil Procedure 59 and 60, and Bankruptcy Rules 9023 and 3008, now before the court.⁶

II. LEGAL ANALYSIS

Under Bankruptcy Rule 9023, which is entitled, "New Trials; Amendment of Judgments, Federal Rule 59 applies in cases under the Bankruptcy Code. Motions under Rule 59(e) for a new trial or altered or amended judgment serve a narrow purpose. In order to succeed on a Rule 59(e) motion, a party must clearly establish either a manifest error of law or fact or must present newly discovered evidence.⁷ In *In re Halko*, the court summarized the applicable legal standard when a bankruptcy court considers a Rule 59(e) motion:

The function of a [R. 59(e)] motion to alter or amend a judgment is not to serve as vehicle to relitigate old matters or present the case under a new legal theory . . . Moreover, the purpose of such a motion "is not to give the moving party another 'bite at the apple' by permitting the arguing of issues and procedures that could and should have been raised prior to judgment." . . . The rulings of a bankruptcy court "are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure" . . . "A motion brought under Rule 59(e) is not a procedural

⁶ Pl. 31.

⁷ Fed. R. Civ. P. 59(e); Bankruptcy Rule 9023.

folly to be filed by a losing party who simply disagrees with the decision; otherwise, the court would be inundated with motions from dissatisfied litigants.”⁸

In this case, the debtor has failed to meet her burden under Rule 59(e). She has not presented any evidence or legal authority to dispute the court’s reliance on relevant Supreme Court and Louisiana case law that establish that income tax refunds do not constitute disposable earnings within the contemplation of the applicable federal and state statutes.⁹ Further, the debtor has not presented any evidence or authority to dispute the court’s alternative ruling that even if the refund was subject to the exemption under state law, it would still not be exempt because the trustee did not retain more than 25% of the debtor’s earnings in any given week.

The debtor’s Rule 59(e) motion is based entirely in equitable factors – that congressional intent dictates the exemption of her tax refund as a form of public assistance because they were designed as benefits for poverty relief. “Exemptions, however, are purely creatures of statute. No matter how strong may be the equitable considerations that support the creation of an exemption, this [c]ourt has no authority to enlarge the legislature’s designation.”¹⁰ Thus,

⁸ 203 B.R. 668, 671-72 (Bankr. N.D. Ill. 1996)(internal citations omitted).

⁹ See *Kokoszka v. Belford*, 417 U.S. 642, 651-2 (1974)(stating that the term “disposable earnings” is limited to periodic payments of compensation and does not pertain to every assets that is traceable in some way to wages); *In re Ballard*, 238 B.R. 610, 644 (Bankr. M.D. La. 1999)(holding that La.R.S. 13:3881, which is virtually identical to the federal exemption scheme interpreted in *Kokoszka*, is not applicable to an income tax refund).

¹⁰ *In re Boyett*, 250 B.R. 822, 826 (Bankr. S.D. Ga. 2000), quoting *In re Garrett*, 225 B.R. 301, 303 (Bankr. W.D.N.Y. 1998). See also *Lemos v. Rakozy (In re Lemos)*, 243 B.R. 96, 1000 (Bankr. D. Idaho 1999).

the statutory legal authority and controlling case law in this circuit mandate that the court reject the debtor's argument.

In *Matter of Collins*, the Fifth Circuit held that a federal earned income tax credit did not come within the scope of Louisiana's public welfare and assistance statutes exempting "all assistance" from levy or execution.¹¹ It explained:

A bankruptcy estate ordinarily includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). The debtor, however, may claim exemptions provided by law. Congress offered a detailed scheme of exemptions in § 522(d), but allowed states to opt out in favor of their own exemptions. *See id.* § 522(b). Louisiana has exercised this option and has provided, "All assistance shall be inalienable by any assignment or transfer and shall be exempt from levy or execution under the laws of this state." La.R.S. § 46:111. "Assistance" is defined by a statute in the same title as "money payments under this Title" . . . [The debtor] would be entitled to the exemption only if the EITC [Earned Income Tax Credit] is part of the "all assistance" referred to in § 46:111. It is plainly not, because the federal credit is not a "money payment under this Title."¹²

Following the Fifth Circuit's interpretation of § 46:111, the court finds that the analysis is equally applicable to the debtor's refund of wages subjected to overpayment and child tax credit, as these too, are not money payments made under Title 46, and thus do not fit the definition of "assistance."

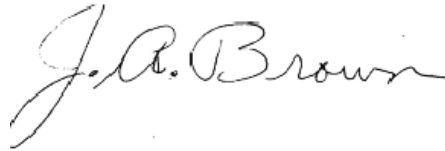
¹¹ *Matter of Collins*, 170 F.3d 512 (5th Cir. 1999).

¹² *Id.*, at 513.

III. CONCLUSION

For the foregoing reasons, the court affirms its order of May 19, 2004, and denies the debtor's motion. An appropriate order will be entered.

New Orleans, Louisiana, July 12, 2004

A handwritten signature in cursive script, reading "J. A. Brown".

JERRY A. BROWN
BANKRUPTCY JUDGE